

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN HANCOCK LIFE INSURANCE
COMPANY, JOHN HANCOCK VARIABLE
LIFE INSURANCE COMPANY, and
MANULIFE INSURANCE COMPANY (f/k/a
INVESTORS PARTNER INSURANCE
COMPANY),

Plaintiffs,

v.

ABBOTT LABORATORIES,

Defendants.

CIVIL ACTION NO. 05-11150-DPW
Hon. Judge Douglas P. Woodlock

OBJECTIONS TO AFFIDAVIT OF LYNN KLOTZ, PH.D.

Abbott Laboratories (“Abbott”) objects to paragraphs 35(a)-(f), 36(a)-(l), 37(a)-(c), and 38-40 (to the extent they incorporate paragraphs 35-37) of the Affidavit of Lynn Klotz, Ph.D. on the grounds of lack of foundation and hearsay. Each of these paragraphs purports to present “testimony” regarding events that occurred at internal Abbott meetings which Dr. Klotz did not attend, or based upon his interpretation of internal Abbott documents which were not written by or addressed to Dr. Klotz. The purported “testimony” is nothing more than an improper brief filed by Hancock in an attempt to present additional argument to the Court.

Abbott further objects to these same paragraphs on the grounds that Dr. Klotz was instructed in his deposition not to answer any questions with respect to knowledge he obtained after July 2000 because any such knowledge constituted attorney work product. (Klotz

Deposition, p. 14, lns. 8 to p. 18, ln. 10). Dr. Klotz testified at his deposition that (1) he did no work on the Abbott-Hancock transaction after July 2000, (Klotz deposition, p. 14, lns. 8-17); (2) he had no knowledge or information about any issues in that case from July 2000 (before the events described in these paragraphs allegedly took place), until he was retained by Choate Hall & Stewart in 2006 as a non-testifying consultant (Klotz Deposition, p. 14, lns. 8 to p. 18, ln. 10; p. 218, ln. 17 to p. 219, ln. 1); (3) that he had no intention of testifying at trial to anything that occurred after July 2000. (Klotz deposition, p. 219, ln. 10 to p. 220, ln. 2). True and correct copies of the above cited portions of the deposition of Lynn Klotz, May 2007 are attached as Exhibit A.

ABBOTT LABORATORIES

By its attorneys

/s/ Eric J. Lorenzini

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Dated: March 3, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 3, 2008.

Date: March 3, 2008.

/s/ Eric J. Lorenzini

Exhibit A

1 Volume: I, Pages 1 - 224 Exhibits: 1 - 19

2 UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF MASSACHUSETTS

4 CIVIL ACTION NO. 05-1150DPW

5 ----- x

6 JOHN HANCOCK LIFE INSURANCE COMPANY,

7 JOHN HANCOCK VARIABLE LIFE INSURANCE COMPANY,

8 and MANULIFE INSURANCE COMPANY,

9 (f/k/a INVESTORS PARTNER INSURANCE COMPANY),

10 Plaintiffs,

11 v.

12 ABBOTT LABORATORIES,

13 Defendant.

14 ----- x

15

16 VIDEOTAPED DEPOSITION OF LYNN KLOTZ, Ph.D.

17 Thursday, November 16, 2006, 9:10 a.m.

18 Donnelly, Conroy & Gelhaar

19 One Beacon Street

20 Boston, Massachusetts

21

22 Reporter: Dana Welch, CSR, RPR

23

24 Certified LiveNote Trainer

1 Q. For what purpose were you -- were you

2 looking at the Friedman report?

3 A. I think just general background.

4 Q. Is there anything in the report that you

5 noted that you thought was incorrect?

6 A. No. I thought he did a very good job and

7 thorough.

8 Q. Did you -- when was the last work you did

9 for John Hancock as a consultant in connection with

10 this investment?

11 A. The last work was on this investment. It

12 was the interview with Dr. Leonard at Abbott. And

13 I wrote up a preliminary memo on what -- what --

14 how the interview went and what was said.

15 Q. Okay. We'll be looking at that.

16 That was sometime in the -- in 2000,

17 correct?

18 A. Yeah.

19 Q. And since then, you've done -- besides the

20 preparation for this deposition, you've done no

21 work on this?

22 A. Well, a year ago, I was retained by Choate

23 Hall and Stewart to -- to look into some of the

24 technical issues.

1 Q. What technical issues were you retained to
2 look at?

3 MR. DAVIS: Objection. He's not -- we are
4 not planning on calling him as a testifying
5 expert. We have retained him as an
6 independent consultant non-testifying; so work
7 that he's done for us we would regard as work
8 product.

9 So I'm going to instruct him not to answer
10 questions about that work. He's certainly
11 free to answer any questions about the work
12 that he did pertaining to this transaction
13 before he was retained as an independent
14 consultant.

15 Q. All right. When -- when exactly were you
16 retained; do you know?

17 A. I can't say exactly. I'm guess -- spring
18 of 2000 would be my guess.

19 Q. I mean, in terms of the consultation --
20 strike that.

21 In terms of the retention by Choate
22 Hall --

23 A. About -- about a year ago.

24 Q. About a year ago.

1 (Interruption for clarification by the
2 reporter.)

3 (Off-the-record discussion.)

4 Q. And I -- and I know you know what I'm
5 going to say, but you've got to wait.

6 The other thing is, is sometimes I
7 pause --

8 A. Yeah.

9 Q. -- in the middle of a sentence because I
10 want to get it right so that we have a clear
11 record.

12 A. Okay.

13 Q. And that's not really an invitation for
14 you to jump in and answer.

15 A. May have to remind me a few times.

16 Q. All right. We're not in a rush. It's not
17 a speed contest.

18 The -- I think the question was, when were
19 you retained by Choate Hall in connection with this
20 case?

21 A. About a year ago.

22 Q. And about how much time have you spent on
23 the matter?

24 A. About a year ago, I spent maybe two, three

1 weeks.

2 Q. If you could just answer this yes or no.

3 Did you prepare any -- anything in writing in

4 connection with this --

5 MR. DAVIS: Objection. I don't think

6 that -- I instruct him not to answer that

7 question.

8 I mean, again, he's not a testifying

9 expert, so I don't think you're entitled to

10 inquire on work that he's done in a

11 non-testifying basis.

12 MR. WEINBERGER: Well, yeah, I -- I

13 understand. But I -- I think that because he

14 is a percipient witness, I'm at least entitled

15 to, without getting into the substance of the

16 work, to test whether that's -- you know, it's

17 a legitimate claim or privilege by asking

18 about the existence of things without going

19 into the substance, I think I'm entitled to do

20 that.

21 MR. DAVIS: No, I don't think you are.

22 We've disclosed the fact that we retained him

23 as a non-testifying expert. And actually, I

24 don't think you're entitled to any more than

1 that.

2 So I'm going to instruct him not to answer
3 questions about work that he's done for us as
4 a non-testifying expert. Again, I'm -- he's
5 here today and he's free to discuss with you
6 any work that he did for Hancock prior to
7 that.

8 Q. Okay. So I assume you'll follow your
9 counsel's instructions?

10 A. Yes.

11 Q. All right. Now, getting back to the work
12 you did for Hancock -- and actually, I want to ask
13 you something else.

14 Were -- were you asked in connection with
15 this case to pull together any documents, files,
16 e-mails or any other material you have that related
17 to the work you did for John Hancock on this
18 investment? And I'm not talking about the work,
19 the consulting work you did with Choate Hall, but
20 I'm talking about work you did in 2000.

21 A. Yes. All my documents were shared with
22 Steve Blewitt.

23 Q. Shared in -- shared in what way?

24 A. I e-mailed them to him as I was doing

1 was coming to market?

2 A. Is the only one I knew that -- the only
3 one I can remember I knew anything about, I'll put
4 it that way.

5 Q. You didn't know it was coming to market;
6 just you remember --

7 A. No.

8 Q. It says, "Strict go/no go criteria will
9 determine if the MMPI can meet these hurdles."
10 Were you aware of that?

11 MR. DAVIS: Objection. You can respond.

12 THE WITNESS: No, I wasn't. This stuff
13 doesn't look familiar from the point of view
14 it was in the first memo. So --

15 MR. WEINBERGER: Let me just look at my
16 notes.

17 Q. Just so we're clear on this, from the time
18 you had your call with Dr. Leonard until the time
19 you were contacted by Choate, you had absolutely no
20 involvement in this matter, correct?

21 A. I sent, after Dr. Leonard's, I wrote up my
22 notes and sent them. And I can't remember whether
23 Steve had responded to those, you know, saying
24 thank you, I got them. I don't know. But beyond

1 that, I had no contact.

2 MR. WEINBERGER: Okay. And counsel, am I

3 correct that it's your position that all work

4 he did from the time that you contacted him

5 until the present is as an expert consultant,

6 non-testifying consultant?

7 MR. DAVIS: From the time he was retained

8 as a non-testifying expert consultant, that

9 work he has done for us is in that capacity.

10 Q. So you have no knowledge with respect to

11 any issues in this case between the date of your

12 interview with Dr. Leonard and your retention by

13 Choate that you would expect to testify about at

14 the trial of this case; is that correct?

15 A. That's not exactly correct. Gretchen

16 Edson asked me for whatever documents I had and

17 that was sometime before I talked to Brian.

18 MR. DAVIS: I object to the question

19 actually. Please pause.

20 Q. She asked you to produce documents.

21 A. Yes.

22 Q. We've already discussed that.

23 A. Yes.

24 Q. But other than that?

1 MR. DAVIS: Objection. You can respond.

2 THE WITNESS: Other than, no.

3 MR. WEINBERGER: I have nothing further.

4 MR. DAVIS: You haven't asked him any

5 questions about 773. I offer you the

6 opportunity to do so if you wish.

7 MR. WEINBERGER: 773 is not in this case.

8 Should the court grant your -- you've got a

9 motion for leave to amend, which obviously

10 means it's not in the case, otherwise you

11 wouldn't need one. And should the court grant

12 that motion, then we'll need to take

13 appropriate discovery with respect to 773 as

14 well as anything else that is the subject of

15 the amendment. But I'm not going to be taking

16 depositions about something that is not in

17 your complaint.

18 MR. DAVIS: Okay. Abbott has taken

19 discovery about 773 in this case already. And

20 I offer you now the opportunity to question

21 him about 773 if you wish to do so. I don't

22 want to bring him back later so that you can

23 further question him about 773 when it has

24 been an issue in this case and you have the

1 CERTIFICATE

2

3 I, LYNN KLOTZ, Ph.D., do hereby certify that

4 I have read the foregoing transcript of my

5 testimony, and further certify that it is a true

6 and accurate record of my testimony (with the

7 exception of the corrections listed below):

8 Page Line Correction

9

10

11

12

13

14

15

16

17

18

19 Signed under the pains and penalties of

20 perjury this ____ day of _____, 2006.

21

22 _____

LYNN KLOTZ, Ph.D.

23

24

1 CERTIFICATE

2 Commonwealth of Massachusetts

3 Suffolk, ss.

4

5 I, Dana Welch, Registered Professional

6 Reporter and Notary Public in and for the

7 Commonwealth of Massachusetts, do hereby certify

8 that LYNN KLOTZ, Ph.D., the witness whose

9 deposition is hereinbefore set forth, was duly

10 sworn by me and that such deposition is a true

11 record of the testimony given by the witness.

12 I further certify that I am neither related

13 to nor employed by any of the parties in or counsel

14 to this action, nor am I financially interested in

15 the outcome of this action.

16 In witness whereof, I have hereunto set my

17 hand and seal this 20th day of November, 2006.

18

19

Dana Welch

20 Notary Public

My commission expires:

21 October 22, 2010

22

23

24